

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY MEXICO

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E.O. 11652: N/A

TAGS: P4, CPRS

SUBJECT: DIPLOMATIC IMMUNITY OF EMBASSY AND OTHER U.S.

GOVERNMENT EMPLOYEES IN MEXICO

REF: MEXICO 3126

1. REFTEL DESCRIBED TWO SEPARATE INCIDENTS IN WHICH USG EMPLOYEES HAD BEEN DETAINED BY MEXICAN POLICE AND DENIED FREEDOM PENDING OFFICIAL INVESTIGATION OF INCIDENTS IN WHICH THEY WERE INVOLVED. IN ONE CASE A MARINE GUARD, WHO HAS STATUS OF ADMINISTRATIVE AND TECHNICAL EMPLOYEE OF EMBASSY, WAS DENIED DIPLOMATIC IMMUNITY ON THE GROUND THAT THE ACTIVITIES IN WHICH HE WAS ENGAGED WERE OF A NON-OFFICIAL CHARACTER. IN THE OTHER CASE A SCREWWORM OFFICIAL, NOT CONNECTED WITH THE EMBASSY, WAS DENIED DIPLOMATIC IMMUNITY ON THE GROUND THAT HE IS NOT COVERED BY THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS. EMBASSY REQUESTED DEPARTMENT'S INTERPRETATION OF APPLICABLE LAW WITH A VIEW TOWARDS RESPONDING TO MEXICAN AUTHORITIES WITH INSISTENCE UPON

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RECOGNITION OF DIPLOMATIC IMMUNITY STATUS WHERE WARRANTED.

2. IN CASE INVOLVING MARINE SECURITY GUARD, THERE IS NO QUESTION THAT A PERSON ENJOYING STATUS OF ADMINISTRATIVE AND TECHNICAL MEMBER OF THE MISSION IS ENTITLED TO FULL

IMMUNITY FROM CRIMINAL JURISDICTION BY VIRTUE OF ARTICLE 37(2) AND ARTICLE 31(1) OF THE VIENNA CONVENTION. IT IS NOTED IN THIS REGARD THAT A MEMBER OF THE ADMINISTRATIVE AND TECHNICAL STAFF ENJOYS FULL BENEFITS OF ARTICLE 29 OF THE CONVENTION, UNDER WHICH A DIPLOMATIC AGENT IS IMMUNE FROM ANY FORM OF ARREST OR DETENTION. THE ONLY LIMITATION ON THE IMMUNITY OF AN ADMINISTRATIVE AND TECHNICAL STAFF MEMBER, VIS A VIS DIPLOMATIC AGENT, RELATES TO THE SCOPE OF IMMUNITY FROM CIVIL AND ADMINISTRATIVE JURISDICTION. IN THE CASE OF NON-OFFICIAL ACTS, ADMINISTRATIVE AND TECHNICAL STAFF MEMBERS ENJOY NO IMMUNITY FROM SUCH CIVIL AND ADMINISTRATIVE JURISDICTION. THE MOST SIGNIFICANT ISSUE IN THE MSG CASE IS THE INFRINGEMENT OF THE INVIOABILITY OF PERSON WHICH HE ENJOYS UNDER INTERNATIONAL LAW.

3. WITH RESPECT TO THE SCREWWORM OFFICIAL, WHO IS NOT LISTED AS A MEMBER OF THE DIPLOMATIC MISSION STAFF, THE MEXICAN GOVERNMENT SEEMS TO BE CLEARLY WITHIN ITS RIGHTS IN REFUSING TO RECOGNIZE DIPLOMATIC IMMUNITY STATUS. NEVERTHELESS, IN ORDER FOR DEPARTMENT TO DETERMINE WHETHER ANYTHING IN THE U.S.-MEXICO CONSULAR TREATY OF 1943 WOULD EXTEND ANY IMMUNITIES TO A PERSON IN THIS CATEGORY, IT WILL BE NECESSARY FOR DEPARTMENT TO BE INFORMED OF THE SPECIFIC ARTICLES OF THE CONSULAR CONVENTION WHICH HAVE BEEN EXTENDED TO SCREWWORM OFFICIALS UNDER THE AGREEMENT WITH MEXICO APPLICABLE TO SUCH PERSONS. SISCO

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